Supreme Court, U.S.
FILED
DEC 19 1997
CLERK

No. 97-851

In The
Supreme Court of The United States
October Term 1997

DIANNA LAWSON, DAVID LAWSON,
MICHELLE LAWSON, AND JUSTIN LAWSON,
Petitioners,

v.

UNITED STATES OF AMERICA, CITY OF LORAIN,
OHIO AND LORAIN PORT AUTHORITY,
Respondents.

Petition For A Writ Of Certiorari
To The United States Court of
Appeals For The Sixth Circuit

JOINT RESPONSE OF CITY OF LORAIN AND LORAIN PORT AUTHORITY TO PETITION FOR WRIT OF CERTIORARI

***JOHN G. PETO**
BRIAN D. SULLIVAN
REMINGER & REMINGER CO., L.P.A.
The 113 St. Clair Building
Cleveland, OH 44114
(216) 687-1311

Attorneys for Respondent
Lorain Port Authority
**Counsel of Record*

***ROBERT J. GARGASZ**
MICHAEL J. SCHERACH
City of Lorain Law Dept.
City Hall, 7th Floor
Lorain, OH 44052
(440) 244-5663

Attorneys for Repondent
City of Lorain
**Counsel of Record*

LEGAL ADVANTAGE * 432 Walnut St. * Suite 200 * Cincinnati, OH 45202

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QUESTIONS PRESENTED FOR REVIEW RELATED TO RESPONDENTS, CITY OF LORAIN AND LORAIN PORT AUTHORITY

1. Whether the City of Lorain or the Lorain Port Authority have a duty under state law to petition the United States Coast Guard, the entity with exclusive authority and control over a structure within navigable waters, for permission to place additional navigational aids on a structure that was already marked in accordance with federal rules and regulations.

2. Whether additional navigational aids beyond those installed and maintained by the United States Coast Guard would have prevented the allision when the Petitioner, David Lawson, operated a motorboat in an intoxicated state, at an excessive rate of speed, and without a proper lookout.

PARTIES TO THE PROCEEDINGS BELOW

Petitioners/Plaintiffs Below:

Petitioner David Lawson was the operator of the motorboat at the time of the allision. Petitioner Dianna Lawson is the wife of David Lawson and was a passenger at the time of the allision. Petitioners Michelle Lawson and Justin Lawson are the natural children of David and Dianna Lawson and at all relevant times were minors.

Respondents/Defendants Below:

Respondent United States of America is a sovereign nation. Respondent City of Lorain, Ohio is a municipality which is incorporated as such under the laws of the State of Ohio. Respondent Lorain Port Authority is a port authority which was established under the laws of the State of Ohio.

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STATEMENT OF THE CASE

A. Underlying Facts

This lawsuit arises out of injuries allegedly sustained as a result of an allision of a motorboat with the outer breakwall of the Lorain Harbor in Lorain, Ohio. At the time of the allision, the operator of the motorboat, David Lawson, was intoxicated. In fact, Mr. Lawson was convicted of operating the motorboat recklessly, at an excessive rate of speed, and without a proper lookout.

The breakwall which the Petitioners struck was in existence at the same location since the 1960's. The United States Army Corp of Engineers and the United States Coast Guard handled all aspects of the design, construction, and maintenance of the wall. The breakwall was marked by navigational aids (lights) at either end of it. The United States Coast Guard installed, maintained, and inspected the lights. The lights were operating properly on the night of the allision.

Neither the City of Lorain ("City") nor the Lorain Port Authority ("Port") owned, controlled, or maintained the outer breakwall of the Lorain Harbor. Moreover, neither the City nor the Port maintained, inspected and/or tested the navigational aids located on the wall. In fact, the real

property (submerged lands) upon which the outer breakwall rests is owned by the State of Ohio. The State of Ohio was never a party to this action.

B. Issues in Litigation

The Petitioners have argued that both the City and the Port have the ability to petition the Coast Guard for permission to place additional navigational aids on the breakwall. They have asserted that, because the City and the Port have the ability to request additional navigational aids, they also have a corresponding duty to undertake such a task. Finally, they have argued that, had the City or the Port requested that additional navigational aids be placed on the breakwal, the Coast Guard would have honored the request and he additional lights would have prevented the allision.

The City and the Port are statutorily precluded from taking any unilateral steps to establish, erect, or maintain any aid to navigation in or adjacent to the waters subject to the jurisdiction of the United States. Indeed, any public body which unilaterally undertakes such action is guilty of a misdemeanor. See 14 U.S.C. Section 83.

C. Proceedings Below

Throughout this litigation, the City and the Port denied that they had a legal duty to request the placement of additional lights on the breakwall. The District Court agreed and concluded that, inasmuch as neither the City nor the Port possessed or exercised control or authority over the breakwall, they did not have a legal duty, under state law, to request the placement of additional navigational aids on it. As such, the District Court granted the City and the Port summary judgment.

The United States Court of Appeals for the Sixth Circuit affirmed the District Court's determination. The Sixth Circuit concluded that neither the City nor the Port had a legal duty or even an absolute right to add lights to the breakwall and, as such, could not be held liable for the Petitioners' injuries.

SUMMARY OF ARGUMENT

The Sixth Circuit Court of Appeals and the District Court properly concluded that neither the City nor the Port owed the Petitioners any duty to petition the United States Coast Guard to place additional navigational aids on the Lorain Harbor outer breakwall. The structure was adequately marked by the Coast Guard pursuant to federal

rules and regulations. Additionally, neither the City nor the Port maintained, inspected, or controlled the structure. As such, the judgment of the lower courts was proper and further review is not warranted.

ARGUMENT OPPOSING CERTIORARI

The Petitioners are attempting to have this Court define the scope and extent of a duty that is a creature of state law. As previously indicated, they have argued that the City and the Port had a duty to request that additional navigational aids be placed on the Lorain breakwall. Ohio law, however, does not impose any such duty.

The State of Ohio has ownership and ultimate legal responsibility, subject to the paramount control of the United States, over land under Lake Erie. State ex rel. Squire v. City of Cleveland, 150 Ohio St. 303 (1948). Ohio's ownership and responsibility extends to the land upon which the outer breakwall is located. Pursuant to Ohio Revised Code Section 741.04, the state has transferred some of its responsibility to shoreline municipalities. The transfer of authority, however, does not include responsibility for seeking permission from the Coast Guard to place additional aids to navigation on the breakwall.

Moreover, federal law prohibits the City and the Port from taking any unilateral actions to place additional navigational aids on the breakwall. Indeed, 14 U.S.C. Section 83 makes it a misdemeanor for municipalities to erect a navigational aid without Coast Guard approval:

> No person, or public body, or instrumentality * * * shall establish, erect, or maintain any aid to maritime navigation in or adjacent to the waters subject to the jurisdiction of the United States * * * without first obtaining authority to do so from the Coast Guard in accordance with applicable regulations. Whoever violates the provisions of this section or of any of the regulations issued by the Secretary in accordance herewith shall be guilty of a misdemeanor and shall be fined * * *.

The Petitioners have argued that the City and the Port had a legal duty to ensure that additional navigational aids were placed on the breakwall. Presumably, the Petitioners would require the City and the Port to violate federal law to place what they believe are the necessary aids to maritime navigation. A legal duty, however, can not arise when such duty would need to be accomplished through the commission of a crime.

Additionally, the record is completely devoid of any evidence that demonstrates that, had the City or the Port petitioned the Coast Guard to place additional lights on the breakwall, the Coast Guard would have complied with the request and the additional navigational aids would have prevented the allision. To the contrary, the evidence presented to the District Court indicated that the operator of the motorboat was intoxicated at the time of the allision. Moreover, the operator was convicted of operating the motorboat at an excessive rate of speed, recklessly, and without a proper lookout. In light of these convictions, it is disingenuous to suggest that additional lights would have warned Mr. Lawson of the location of the breakwall.

Contrary to the Petitioners' argument, the decision of the United States Court of Appeals for the Sixth Circuit was proper and rooted in sound legal authority. The issues presented for review, as against the City and the Port, do not involve matters of great general interest or constitutional import. As such, it is respectfully requested that this Honorable Court deny the Petitioners' request for a writ of certiorari.

CONCLUSION

Wherefore, for the foregoing reasons, the City and the Port respectfully request that this Honorable Court deny the Petitioners request for a writ of certiorari.

Respectfully submitted,

JOHN G. PETO
Counsel of Record for
Lorain Port Authority
BRIAN D. SULLIVAN
REMINGER & REMINGER CO., L.P.A.
The 113 St. Clair Building
Cleveland, Ohio 44114
(216) 687-1311

ROBERT J. GARGASZ
Counsel of Record for
City of Lorain
Civil Assistant to the Law Director
MICHAEL J. SCHERACH
Law Director
City Hall, 7th Floor
Lorain, Ohio 44052
(440) 244-5663

APPENDIX

APPENDIX
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14 U.S.C. Section 83
Unauthorized aids to maritime navigation; penalty

No person, or public body, or instrumentality, excluding the armed services, shall establish, erect, or maintain any aid to maritime navigation in or adjacent to the waters subject to the jurisdiction of the United States, it territories or possessions, or the Trust Territory of the Pacific Islands, or on the high seas if that person, or public body, or instrumentality is subject to the jurisdiction of the United states, without first obtaining authority to do so from the Coast Guard in accordance with applicable regulations. Whoever violates the provisions of this section or any of the regulations issued by the Secretary in accordance herewith shall be guilty of a misdemeanor and shall be fined more than $100 for each offense. Each day during which such violation continues shall be considered as a new offense.

A2

OHIO REVISED CODE
[LAKE ERIE WATERS AND SOILS]

Section 721.04
Use and control of waters and soil of Lake Erie

Any municipal corporations within the limits of which there is included a part of the shore of the waters of Lake Erie may, in aid of navigation and water commerce, construct, maintain, use, and operate, piers, docks, wharves, and connecting ways, places, tracks, and other water terminal improvements with buildings and appurtenances necessary or incidental to such use, on any land belonging to the municipal corporation held under title permitting such use, and also over and on any submerged or artificially filled land made by accretion resulting from artificial encroachments, title to which is in the state, within the territory covered or formerly covered by the waters of Lake Erie in front of littoral land within the limits of such municipal corporation,

whether such littoral land is privately owned or not.

Any such municipal corporation may, be ordinance, subject to federal legislation, establish harbor lines and other regulations for such territory and prohibit the placing, maintaining, or causing or permitting to be placed therein any unlawful encroachments on such territory.

The territory to which this section applies is limited to that within the limits of the municipal corporation and extending into Lake erie to the distance of two miles from the natural shore line. For all purposes of government and exercise of such powers the limits of any such municipal corporation shall be held to be held to extend out, in, over, and under such water and land made or that may be made within such territory. This section does not limit the now existing boundaries of any municipal corporation. Where two municipal corporations have

upland territory fronting on such waters, and there is a conflict because of the curve of the shore line or otherwise as to such two mile boundary, the boundaries of each such municipal corporation may be determined by agreement between the municipal corporations concerned.

All powers granted by this section shall be exercised subject to the powers of the United States government and the public rights of navigation and fishery in any such territory. All mineral rights or other natural resources existing in the soil or waters in such territory, whether now covered by water or not, are reserved to the state.